

Floyd W. Bybee, #012651
BYBEE LAW CENTER, PLC
2473 S. Higley Road
Suite 104-308
Gilbert, AZ 85295-3023
Office: (480) 756-8822
Fax: (480) 302-4186
floyd@bybeelaw.com

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Douglas Smythe;

Plaintiff,

v.

Resurgent Capital Services)
LP; LVNV Funding, LLC;)
Experian Information)
Solutions, Inc.; Equifax)
Information Services, LLC;)

Defendants.

) No.

COMPLAINT

) (Jury Trial Demanded)
)
)

I. Preliminary Statement

1. Plaintiff brings this action for damages based upon Defendants' violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 *et seq.* and / or the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681 *et seq.* Plaintiff seeks recovery of

1 statutory damages, actual damages, punitive damages,
2 costs and attorney's fees.

3 **II. JURISDICTION**

4 2. Jurisdiction of this Court, over this action and the
5 parties herein, arises under 15 U.S.C. § 1692k(d)
6 (FDCPA), 15 U.S.C. § 1681p (FCRA), and 28 U.S.C. §
7 1331. Venue lies in the Phoenix Division of the
8 District of Arizona as Plaintiff's claims arose from
9 acts of the Defendants perpetrated therein.

10 **III. PARTIES**

11 3. Plaintiff resides in Maricopa County, Arizona.

12 4. Plaintiff is a "consumer" as that term is defined by
13 FDCPA § 1692a(3) and FCRA § 1681a(c).

14 5. Defendant Resurgent Capital Services, L.P. is a
15 foreign limited partnership doing business within
16 the state of Arizona as a collection agency.

17 6. Resurgent is licensed as a collection agency by the
18 Arizona Department of Financial Institutions,
19 license number 0905404.

20 7. Resurgent collects or attempts to collect debts owed
21 or asserted to be owed or due another.

22 8. In the alternative, Resurgent collects or attempts
23 to collect debts it has purchased or acquired after
24 default.

25 9. Resurgent is a "debt collector" as that term is

1 defined by FDCPA § 1692a(6).

2 10. Defendant LVNV Funding, LLC is a foreign limited
3 liability company doing business within the state of
4 Arizona as a collection agency.

5 11. LVNV collects or attempts to collect debts owed or
6 asserted to be owed or due another.

7 12. In the alternative, LVNV collects or attempts to
8 collect debts it has purchased or acquired after
9 default.

10 13. LVNV is a "debt collector" as that term is defined
11 by FDCPA § 1692a(6).

12 14. LVNV is a "person" as that term is defined by FCRA
13 § 1681a(b).

14 15. LVNV is a "furnisher" of information as contemplated
15 by FCRA §§ 1681s-2(a) and (b), who regularly and in
16 the ordinary course of business furnishes
17 information to one or more consumer reporting
18 agencies about consumer transactions or experiences
19 with any consumer.

20 16. Experian Information Solutions, Inc. is an Ohio
21 corporation conducting business within the state of
22 Arizona.

23 17. Experian is a "person" as that term is defined by
24 FCRA § 1681a(b).

25 18. Experian is a "consumer reporting agency" as that

term is defined by FCRA § 1681a(f).

19. Defendant Equifax Information Services LLC is a Georgia limited liability company conducting business within the state of Arizona.

20. Equifax is a "person" as that term is defined by FCRA § 1681a(b).

21. Equifax is a "consumer reporting agency" as that term is defined by FCRA § 1681a(f).

IV. Factual Allegations

22. In or about 2003, Plaintiff opened a credit card account with Bank of America.

23. The charges made on the Bank of America credit card were for personal, family or household purposes.

24. In or about September 2004, Plaintiff defaulted on his payments on the Bank of America credit card account.

25. In April 2007, LVNV sued Plaintiff in the Kyrene Justice Court, Maricopa County, Arizona to collect on the Bank of America account.

26. In the lawsuit, LVNV asserted that it acquired Plaintiff's Bank of America account subsequent to Plaintiff's default.

27. Plaintiff challenged LVNV's claims in the lawsuit, and on August 9, 2007, the Kyrene Justice Court entered an order dismissing the action against

1 Plaintiff "with prejudice."

2 28. Despite the court's dismissal of the case with
3 prejudice, LVNV has continued to attempt to collect
4 the alleged debt from Plaintiff, including reporting
5 the account to the three national credit reporting
6 agencies, including Experian and Equifax.

7 29. Within the past two years, Plaintiff has sent
8 multiple letters to Experian and Equifax disputing
9 LVNV's reporting of the Bank of America debt to his
10 credit reports.

11 30. In June 2009, Plaintiff sent dispute letters to
12 Experian and Equifax disputing LVNV's tradeline as
13 inaccurate and "not mine."

14 31. Upon information and belief, upon receipt of
15 Plaintiff's dispute letter, Experian contacted LVNV
16 concerning Plaintiff's dispute.

17 32. Upon information and belief, LVNV verified to
18 Experian that its tradeline on Plaintiff was
19 accurate as reported.

20 33. Upon information and belief, upon receipt of
21 Plaintiff's dispute letter, Equifax contacted LVNV
22 concerning Plaintiff's dispute.

23 34. Upon information and belief, LVNV verified to
24 Equifax that its tradeline on Plaintiff was accurate
25 as reported.

1 35. On July 17, 2009, Plaintiff's mortgage company
2 obtained a tri-merge credit report on Plaintiff
3 containing data from all three national consumer
4 reporting agencies, including Experian and Equifax.

5 36. The July report reflected that Experian and Equifax
6 were both reporting the LVNV tradeline as an open
7 account, with a balance owing of \$5,428.

8 37. In or about October 2009, Plaintiff again sent
9 letters to Experian and Equifax disputing the LVNV
10 tradeline.

11 38. Upon information and belief, upon receipt of
12 Plaintiff's dispute letter, Experian contacted LVNV
13 concerning Plaintiff's dispute.

14 39. Upon information and belief, LVNV verified to
15 Experian that its tradeline on Plaintiff was
16 accurate as reported.

17 40. Upon information and belief, upon receipt of
18 Plaintiff's dispute letter, Equifax contacted LVNV
19 concerning Plaintiff's dispute.

20 41. Upon information and belief, LVNV verified to
21 Equifax that its tradeline on Plaintiff was accurate
22 as reported.

23 42. In January 2010, Plaintiff applied for preapproval
24 for a mortgage to purchase a home.

25 43. As part of the process, the mortgage company

1 obtained a tri-merged credit report on Plaintiff
2 containing data from all three national consumer
3 reporting agencies, including Experian and Equifax.

4 44. This tri-merged credit report showed that LVNV was
5 continuing to report its tradeline to both Equifax
6 and Experian as a current collection account with a
7 balance owing of \$5,681.

8 45. In January 2010, Plaintiff again disputed the LVNV
9 tradeline Equifax, and attached to his letter of a
10 copy of the Kyrene Justice Court's order showing the
11 LVNV case dismissed "with prejudice."

12 46. Upon information and belief, upon receipt of
13 Plaintiff's dispute letter, Equifax contacted LVNV
14 concerning Plaintiff's dispute.

15 47. Upon information and believe, Equifax did not send
16 LVNV a copy of the Kyrene Justice Court's order
17 dismissing the LVNV case with prejudice.

18 48. Upon information and belief, LVNV verified to
19 Equifax that its tradeline on Plaintiff was accurate
20 as reported.

21 49. On February 2, 2010, Equifax sent Plaintiff notice
22 of the results of its investigation of the LVNV
23 tradeline.

24 50. The Equifax notice shows that the LVNV tradeline was
25 verified by Equifax and by LVNV as accurate.

1 51. The notice from Equifax also showed that LVNV was
2 continuing to report the account as a collection
3 account, with a current balance owing of \$5,705.

4 52. In February 2010, Plaintiff again disputed the LVNV
5 tradeline Experian, and attached to his letter of a
6 copy of the Kyrene Justice Court's order showing the
7 LVNV case dismissed "with prejudice."

8 53. Upon information and belief, upon receipt of
9 Plaintiff's dispute letter, Experian contacted LVNV
10 concerning Plaintiff's dispute.

11 54. Upon information and believe, Experian did not send
12 LVNV a copy of the Kyrene Justice Court's order
13 dismissing the LVNV case with prejudice.

14 55. Upon information and belief, LVNV verified to
15 Experian that its tradeline on Plaintiff was
16 accurate as reported.

17 56. On February 24, 2010, Experian sent Plaintiff a
18 notice that Experian was unable to use the
19 information Plaintiff provided with his dispute, and
20 that it would be contacting the source of the
21 information, and would send Plaintiff the results of
22 that investigation.

23 57. Plaintiff never received notice from Experian
24 concerning the results of its investigation of his
25 February 2010 dispute.

1 58. In April 2010, Plaintiff had located a home that was
2 within his pre-approval budget and entered into a
3 purchase agreement.

4 59. On April 26, 2010, Plaintiff's mortgage company
5 pulled a tri-merge credit report to finalize the
6 financing of his home purchase.

7 60. Because of the lowered credit scores in the April
8 tri-merge credit report, Plaintiff was denied final
9 financing for his home purchase.

10 61. The April 26, 2010 credit report reflected that LVNV
11 was continuing to report the tradeline as a current
12 collection account, with a balance owing of \$5,705.

13 62. On May 3, 2010, Plaintiff filed a complaint with the
14 Arizona Attorney General's office concerning LVNV's
15 continued reporting of the account to the consumer
16 reporting agencies despite the fact that the Kyrene
17 Justice Court had dismissed the LVNV lawsuit with
18 prejudice.

19 63. Upon information and believe, the Attorney General's
20 office forwarded Plaintiff's dispute to LVNV.

21 64. On May 27, 2010, LVNV, through it collection agency,
22 Resurgent, responded to Plaintiff's complaint.

23 65. This was Resurgent's first communication with
24 Plaintiff concerning the LVNV debt.

25 66. The May 27, 2010 letter from Resurgent stated:

1 "Resurgent outsources collection
2 efforts to third-party collection
3 agencies and collection attorneys. Mr.
4 Smythe's Citibank account (reference
5 number 120784969) has never been
6 outsourced to a collection attorney;
7 therefore, no legal action has been
8 taken on this account. However, his BOA
9 account (reference number 126738343)
10 was outsourced to The Law Office of
11 Paul Guglielmo ("Guglielmo") in
12 February 2007. Guglielmo filed suit
13 against Mr. Smythe in Kyrene Justice
14 Court under case number CC2007-064614
15 on April 5, 2007. We have confirmed
16 with Guglielmo that the case was
17 dismissed *without* prejudice on August
18 3, 2007. If Mr. Smythe has
19 documentation showing otherwise, he may
20 submit it to us for review."

21 67. On July 28, 2010, Plaintiff sent the Attorney
22 General's office a copy of the Kyrene Justice
23 Court's Order dismissing the case with prejudice.

24 68. Upon information and belief, the Attorney General
25 forwarded the copy of the Kyrene Justice Court's
26 order to Resurgent.

27 69. On October 27, 2010, Plaintiff obtained a copy of
28 his credit report from Equifax.

29 70. This Equifax report reflected that LVNV was
30 continuing to report its tradeline as an open
31 account, with a balance owing of \$6,188.

32 71. On October 27, 2010, Plaintiff obtained a copy of
33 his credit report from Experian.

34 72. This Experian report reflected that LVNV was

1 continuing to report its tradeline as an open
2 account, with a balance owing of \$6,188.

3 73. On or about October 30, 2010, Plaintiff sent a
4 dispute letter to Resurgent with a copy of the
5 Kyrene Justice Court Order showing that the case had
6 been dismissed with prejudice.

7 74. On December 3, 2010, Resurgent sent Plaintiff a
8 collection letter stating "Enclosed please find
9 validation of the debt that verifies the debt
10 [sic]."

11 75. The "verification" attached to Resurgent's letter
12 was a statement attached to the letter which said:

13 **Validation of Debt**
14 **December 3, 2010**
Douglas W Smythe

15 As of the date of this communication,
16 you owe \$6,265.51 on Account number
17 4427100022418151 which is now owned by
18 LVNV Funding LLC. Should you desire to
19 payoff the account in full, you should
20 contact us at 1-888-665-0374 to
determine the payoff balance as
interest, payments, credits, fees,
and/or other permissible charges can
continue to cause your account balance
to vary from day to day.

21 76. On December 8, 2010, Plaintiff again obtained a tri-
22 merged credit report from his mortgage broker
23 showing what each of the three national consumer
24 reporting agencies were reporting on Plaintiff.

25 77. This tri-merged credit report showed that LVNV was

1 continuing to report its tradeline to both Equifax
2 and Experian as a current collection account with a
3 balance owing of \$6,238.

4 78. On December 21, 2010, Resurgent sent Plaintiff
5 another collection letter demanding payment on the
6 LVNV account.

7 79. Despite repeated disputes to the consumer reporting
8 agencies, and disputes directly with Resurgent, LVNV
9 continues to report its tradeline to Experian and
10 Equifax as a collection account, with a current
11 balance owing.

12 80. Despite provided proof that the Kyrene Justice Court
13 case brought by LVNV against Plaintiff was dismissed
14 with prejudice, LVNV, through its collection agency
15 Resurgent, continues to attempt to collect the
16 alleged debt from Plaintiff.

17 81. Defendants Experian, Equifax and LVNV have continued
18 to report inaccurate, derogatory and improper
19 information and failed to retract, delete and/or
20 suppress inaccurate, derogatory and improper
21 information about the Plaintiff, as described more
22 fully herein.

23 82. As a result and proximate cause of Defendants'
24 actions, Plaintiff has suffered actual damages,
25 including, but not limited to, loss of credit

1 opportunities, denial of credit, and emotional
2 distress.

3 **V. Causes of Action**

4 **a. Fair Debt Collection Practices Act**

5 83. Plaintiff repeats, realleges, and incorporates by
6 reference the foregoing paragraphs.

7 84. Defendants LVNV's and Resurgent's violations of the
8 FDCPA include, but are not necessarily limited to,
9 15 U.S.C. §§ 1692e, and 1692e(2)(A), 1692e(5),
10 1692e(8), 1692e(10), 1692f, and 1692g.

11 85. As a direct result and proximate cause of Defendants
12 LVNV's and Resurgent's actions in violation of the
13 FDCPA, Plaintiff has suffered actual damages.

14 **a. Fair Credit Reporting Act**

15 86. Plaintiff repeats, re-alleges, and incorporates by
16 reference the foregoing paragraphs.

17 87. Defendant LVNV failed to conduct a reasonable
18 investigation of Plaintiff's disputes it received
19 from Experian and Equifax, and otherwise failed to
20 comport with FCRA § 1681s-2(b).

21 88. As a result of Defendant LVNV's actions, Plaintiff
22 has been damaged.

23 89. Defendants Experian and Equifax failed to conduct a
24 reasonable investigation of Plaintiff's disputes,
25 and otherwise failed to comport with FCRA § 1681i.

1 90. Defendants Experian and Equifax have continually
2 added, stored, maintained and disseminated personal
3 and credit information, in consumer reports it
4 prepared and issued, about Plaintiff which was
5 inaccurate, false, erroneous and misleading despite
6 notice from Plaintiff that such information was
7 inaccurate.

8 91. Defendants Experian and Equifax have willfully, or
9 alternatively, negligently, violated FCRA § 1681i.

10 92. As a direct result and proximate cause of Experian's
11 and Equifax's continued reporting of erroneous and
12 adverse information on Plaintiff's credit reports,
13 Plaintiff has suffered and continues to suffer
14 damages including, but not limited to, humiliation,
15 embarrassment, anxiety, credit denial, higher
16 interest rates, higher insurance rates, and / or
17 loss of opportunity.

18 93. As a result of Defendants' negligent failure to
19 comply with the FCRA, Defendants are each liable to
20 Plaintiff in an amount equal to the sum of (1) any
21 actual damages sustained by Plaintiff as a result of
22 said failure and (2) the costs of this action
23 together with reasonable attorneys' fees.

24 94. As a result of Defendants' willful failure to comply
25 with the FCRA, Defendants are liable to Plaintiff in

1 an amount equal to the sum of (1) any actual damages
2 sustained by Plaintiff as a result of the failure or
3 damages of not less than \$100.00 and not more than
4 \$1,000.00 for each such violation; (2) such amount
5 of punitive damages as the court may allow; and (3)
6 the costs of this action together with reasonable
7 attorneys' fees.

8 **VI. DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a jury trial on all issues
10 so triable.

11 **VII. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff requests that judgment be
13 entered against Defendants for:

- 14 a) Actual damages under the FCRA, or in the
15 alternative, statutory damages of \$1,000 per
16 violation pursuant to FCRA § 1681n and/or o;
17 b) Actual damages under the FDCPA;
18 c) Statutory damages under the FDCPA;
19 d) Punitive damages pursuant to FCRA § 1681n;
20 e) Costs and reasonable attorney's fees pursuant to
21 FCRA §§ 1681n and/or o; and
22 f) Such other relief as may be just and proper.
23
24
25

1
2 DATED February 16, 2011 .
3

4 s/ Floyd W. Bybee
5 Floyd W. Bybee, #012651
6 **BYBEE LAW CENTER, PLC**
7 2473 S. Higley Road
8 Suite 104-308
9 Gilbert, AZ 85295-3023
10 Office: (480) 756-8822
11 Fax: (480) 302-4186
12 floyd@bybeelaw.com

13
14 Attorney for Plaintiff
15
16
17
18
19
20
21
22
23
24
25